mand on them may be effected in one of two ways, ie by personal service or by posting the notice through the post at the addresses mentioned in the guarantees or their last known addresses and such notice shall be deemed to be served on the day following that on which it was posted. Thus if posting is preferred, this can be done by ordinarily posting the notices to the addresses of the fourth and fifth defendants as stated in the guarantees and the notices are deemed to have been served on them a day after they are posted.

In this instant case, rather than sending the notices by ordinary post, the solicitors for the plaintiff chose to send them by way of AR registered post and by doing so, the plaintiff has varied cl 8 of both guarantees. By so choosing, the plaintiff has also burdened themselves with the added responsibility of seeing that the AR cards shall be returned to them duly acknowledged by the fourth and fifth defendants, for there to be proper service of such notices on them. In this case both the AR cards were returned with the endorsements 'kembali tidak boleh dituntut'. As there is no proper and effective service of such notices on the fourth and fifth defendants, this in itself affords a defence to both of them.

The other issue raised is non-compliance of s 4 of the Bankers' Books (Evidence) Act 1949, the effect of which is to render evidence on the entries of the first defendant's accounts kept by the plaintiff inadmissible. The plaintiff's solicitors sought to remedy their omission by filing an affidavit to comply with the requirements of s 4 on the day the appeal was heard. Since the appeal before me was in the nature of a rehearing, I had considered that the plaintiff had done whatever was necessary to remedy their omission, and this should not be taken against them, even though such remedy was made at the eleventh hour. Be that as it may, the fact still remains as to the effectiveness of the notices of demand that had been issued against the first, fourth and fifth defendants and as this is a triable issue, I had allowed their appeal with costs.

Appeal allowed.

Solicitors: *James Jeganathan & Co*; *Chooi & Co.*

Reported by *Ng Sheau Jiuan*

Tunku Abdul Rahman Putra Al-Haj & Ors v Dato Seri Dr Mahathir Mohamad

HIGH COURT (KUALA LUMPUR) – SUIT NO S7-22-79 OF 1988
AJAIB SINGH J
25 MAY 1988

Civil Procedure – Striking out writ of summons and statement of claim – Application for – Statement of claim sought injunction orders against political party from carrying out certain activities – Whether statement of claim discloses reasonable cause of action

Societies – Political party declared unlawful – Registration approved for re-formed party – Formation of another political party – Application for registration refused – Statement of claim sought injunction orders against registered re-formed party from carrying out certain activities – Application to strike out statement of claim – Whether statement of claim discloses reasonable cause of action

UMNO ('the old UMNO') was a component of the governing Barisan Nasional which was declared an unlawful society by the High Court (see [1988] 2 MLJ 129). After the declaration, the plaintiffs proceeded to form a new political party to be named as UMNO Malaysia. However, their application to register the party was rejected by the Registrar of Societies. Meanwhile, the defendants formed another political party called UMNO Baru which was duly registered as a society under the Societies Act.

In their statement of claim, the plaintiffs sought three injunction orders against the defendants: (i) to restrain UMNO Baru from issuing any membership application forms or accepting as members former members of the old UMNO; (ii) to restrain the defendants from making any statement touching on the pro tem committee of the proposed UMNO Malaysia; and (iii) to restrain the defendants from transferring, dealing with or otherwise disposing of any of the assets and liabilities of the old UMNO. The defendants now apply for an order that the writ of summons and statement of claim brought against them by the plaintiffs be struck out on the grounds that it discloses no reasonable cause of action, is scandalous, frivolous and vexatious and is an abuse of the process of the court.

Held, allowing the defendants' application:

(1) UMNO Baru is a duly registered society and it cannot be restrained from pursuing its legitimate activities which must include the recruiting of members. No one therefore can have any reasonable cause of action against UMNO Baru in its membership drive.

(2) Upon the cancellation of the old UMNO on 12 February 1988, all the assets and liabilities become vested in the Official Assignee to be dealt with in accordance with the provisions of the Societies Act. UMNO Baru has no assets or liabilities of the old UMNO in its hands and it is in no position to effect any transfer or to dispose of any assets and liabilities of the defunct UMNO.

(3) The plaintiffs' claim for the injunctions is clearly unsustainable. The court will not allow the prosecution of such frivolous and hopeless litigation which will only result in waste of time and expense and undue harassment to the defendants.

Raja Aziz Addruse (*Muhammad Shafee Abdullah* and *Miss Christina Kow* with him) for the plaintiffs.

Zaki Tun Azmi (*Miss Juliana Solomon* with him) for the defendants.

Cur Adv Vult

Ajaib Singh J: By way of summons-in-chambers filed in this suit the defendants are applying for an order that the writ of summons and the statement of claim dated 1 April 1988 brought against them by the plaintiffs be struck out. The grounds put forward in support of the application are that the plaintiffs' statement of claim discloses no reasonable cause of action, is scandalous, frivolous and vexatious and is an abuse of the process of the court.

In their statement of claim the plaintiffs seek three injunction orders against the defendants pending the hearing of an originating motion filed in the High Court on 10 March 1988 by Datuk Rais Yatim in his capacity as the pro tem secretary-general of a proposed society to be known as UMNO Malaysia. In his application which is pending in the High Court Datuk Rais Yatim seeks four prerogative orders. First, an order of certiorari to quash the decision of the Registrar of Societies whereby the application for the registration of UMNO Malaysia was rejected. Secondly, an order of mandamus to direct the Registrar to hear and determine UMNO Malaysia's application for registration according to law. Thirdly, an order of certiorari to quash the decision of the Registrar whereby UMNO Baru was registered as a society under the provisions of the Societies Act 1966 and, fourthly, an order of mandamus to require the Registrar to remove UMNO Baru from the register of societies kept under the Societies Act.

In the present suit which the plaintiffs have filed against the defendants the three injunction orders the plaintiffs seek are first, to restrain UMNO Baru from issuing any membership application forms or accepting as members former members of the old UMNO, secondly, to restrain the defendants from making any statement touching on the pro tem committee of the proposed UMNO Malaysia and, thirdly, to restrain the defendants from transferring, dealing with or otherwise disposing of any of the assets and liabilities of the former UMNO.

The brief facts leading to this application by the defendants are as follows. UMNO which was a component of the governing Barisan Nasional and registered as a society under the Societies Act 1966 was declared unlawful by the High Court on 4 February 1988 because it had contravened certain provisions of the Societies Act. On 7 February 1988, the plaintiffs together with several other people proceeded to form a new political party to be named as UMNO Malaysia. A pro tem committee was elected. The first plaintiff was named as the president, the second plaintiff as the deputy president and the third plaintiff as the treasurer. On 8 February 1988 this pro tem committee applied for registration under the Societies Act but the application was rejected by the Registrar of Societies on 10 February 1988. On 9 March 1988, the pro tem committee lodged an appeal with the Minister of Home Affairs against the decision of the Registrar.

Following the decision of the High Court on 4 February 1988, the Registrar of Societies cancelled the registration of UMNO on 12 February 1988. And on 13 February 1988 UMNO Baru was duly registered as a society under the Societies Act on the application made by the first defendant and Abdul Ghafar bin Baba, the pro tem president and deputy president respectively of UMNO Baru.

The application of Datuk Rais Yatim came up for hearing on 14 March 1988 but this was adjourned by the High Court pending the outcome of the appeal which the pro tem committee of UMNO Malaysia had made on 9 March 1988 to the Minister of Home Affairs against the decision of the Registrar of Societies rejecting UMNO Malaysia's application for registration.

Now to revert to the present application by the defendants to strike out the plaintiffs' writ of summons and statement of claim.

Raja Aziz Addruse for the plaintiffs conceded that the plaintiffs had no cause of action in so far as the application for the second injunction is concerned, that is, to restrain the defendants from making any statement relating to UMNO Malaysia. But he submits that for the other two injunctions the plaintiffs have a cause of action and their claim is not frivolous or vexatious. I am afraid I cannot agree with Raja Aziz Addruse. In my view the plaintiffs have no reasonable cause of action against the defendants. Their claims are altogether frivolous and vexatious. UMNO Baru is a duly registered society and it cannot be restrained from pursuing its legitimate activities which must include the recruiting of members. No one therefore can have any reasonable cause of action against UMNO Baru in its membership drive.

On the question of transferring or disposing of the assets and liabilities of the old UMNO the claim for the injunction against the defendants is wholly misconceived. Upon the cancellation of the old UMNO on 12 February 1988 all the assets and liabilities became vested in the Official Assignee to be dealt with in accordance with the provisions of the Societies Act. UMNO Baru has no assets or liabilities of the old UMNO in its hands and it is in no position to effect any transfer or to dispose any assets and liabilities of the defunct UMNO.

In considering the application by the defendants to strike out the writ and statement of claim the proceedings brought by Datuk Rais Yatim for the orders of certiorari and mandamus are totally irrelevent. The plaintiffs must stand or fall solely on the strength or weakness of their own writ and statement of claim. Datuk Rais Yatim's application cannot stand in the way of the present application by the defendants to strike out the plaintiffs' writ and statement of claim.

This is a plain and obvious case for the court to exercise its inherent jurisdiction to strike out the plain-

tiffs' claim for the injunctions which they seek against the defendants. The plaintiffs' claim for the injunctions is clearly unsustainable. The court will not allow the prosecution of such frivolous and hopeless litigation which will only result in waste of time and expense and undue harassment to the defendants.

The defendants' application is allowed. The writ and the statement of claim filed by the plaintiffs are both struck out with costs.

Order accordingly.

Solicitors: *Shafee & Co*; *Rashid & Lee.*

Reported by *Ng Sheau Jiuan*

Re Kian Hin & Co and another application

HIGH COURT (MALACCA) – ORIGINATING MOTION NOS 32-1 OF 1988 AND 32-2 OF 1988
WAN YAHYA J
24 MAY 1988

Land Law – Land Appeal Board's order to vacate rent control premises – Order of certiorari sought to quash order – No minutes of proceedings before Appeal Board taken – Appeal Board's failure to consider all appeal grounds of applicants – Whether proper hearing existed – Control of Rent Act 1966, ss 12(8), 15(4) – Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970, rr 26 & 27

Administrative Law – Certiorari sought against Land Appeal Board's order to vacate rent control premises – No minutes of proceedings before Appeal Board taken – Appeal Board's failure to consider all appeal grounds of applicants – Uncertainty as to when undated written judgment of Land Appeal Board was pronounced – Serious errors of law – Jurisdiction of Board affected

The applicants, who are tenants of rent control premises, were ordered by the Land Tribunal to vacate the premises occupied by them after hearing an application by the landlord under s 18 of the Control of Rent Act 1966 ('the Act'). The tenants appealed against the entire decision of the Land Tribunal to the Land Appeal Board. At the hearing of the appeal, of which no records were available, the board dismissed the appeal. Evidence of this hearing only appeared incidentally in the order of the Board dated 27 February 1987. The applicants applied to the High Court for an order of certiorari to quash the order of the Appeal Board, relying, inter alia, on these grounds: (a) the Appeal Board denied their rights to have their cases re-heard before the board under r 26 of the Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970 ('the Rules'); (b) the Appeal Board did not consider the applicants' dissatisfaction with the tribunal's findings relating to all the three requirements under s 18(1) of the Act.

Held, allowing the applications:

(1) Under r 26 of the Rules, it is obvious that the tenants are not only entitled by law to have their cases re-heard before the board but the board is further given the power to receive further evidence both orally and by affidavit.

(2) It is clear from s 15(4) when read with s 12(8) of the Control of Rent Act 1966 that the chairman of the Appeal Board is obliged to keep minutes. In the absence of such minutes of proceedings, the court would presume that there had been no proper re-hearing. A denial to the applicants of their rights to a re-hearing is an act clearly affecting the principle of natural justice. A judgment arrived at in breach of this principle is a nullity.

(3) The applicants had expressed their dissatisfaction with the tribunal's findings relating to all the three requirements under s 18(1) of the Act but the grounds of decision indicate that the chairman had merely considered the provision of s 18(1)(b) and had entirely disregarded the other two provisions. The applicants were entitled to be heard on the other two grounds.

(4) Under r 27, the judgment of the Appeal Board must be pronounced on the hearing of the appeal or at a subsequent date. The order under s 32 was made on 27 February 1987 whereas the hearing, according to the order, was on 18 February 1987. As the judgment was undated, it is impossible to say whether it was pronounced on the date of hearing on 18 February or 27 February. As it was not an oral judgment, it is unlikely to be pronounced on the date of hearing.

(5) The three errors of law are of a serious nature. Taken together, they amounted to a denial of justice to the applicants which had affected the jurisdiction of the board.

Legislation referred to
Control of Rent Act 1966 s 12(8), 15(4), 18(1)
Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970 rr 26, 27

Ong Beng Hian for the landlord.
Yau Jiok Hua for the applicants.

Cur Adv Vult

Wan Yahya J: The two originating motions are substantially identical except for the names of the applicants. In both these cases the applicants prayed for an order of certiorari to quash the order of the Rent Board.

The facts of the case, as I can gather from some of the records produced before us, are as follows: the applicants who are tenants of rent control premises were ordered by the Appeal Board to vacate the premises occupied by them. At the initial hearing before the Land Tribunal – the records of proceedings of which were properly kept and produced before us as exhibits – the landlord had applied under s 18 of the Control of Rent Act 1966 for possession for development purposes. The tenants opposed this application on the grounds that the requirements of s 18(1) had not been fully satisfied. The Rent Tribunal after hearing both parties came to the conclusion that these requirements, in particular provision 18(1)(b) had been satisfied. The tenants then appealed against the entire decision of the Land Tribunal. In their memorandum of appeal the solicitors for the tenants set out specifically their dissatisfaction with the